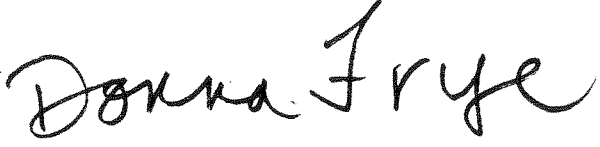


COUNCILMEMBER DONNA FRYE
City of San Diego
Sixth District

MEMORANDUM

DATE: October 20, 2003
TO: Casey Gwinn, City Attorney
FROM: Councilmember Donna Frye 
SUBJECT: Transit Area and Residential Tandem Parking Overlay Zones

On at least three occasions the Community Planners Committee (CPC) appeared before the Land Use and Housing Committee regarding the application of the Transit Area Overlay Zone (TAOZ) and the Residential Tandem Overlay Zone (RTPOZ) in December 2000/January 2001. CPC alleged that the City failed to follow proper legal procedures for the application of the zones. Staff responded that "... the City Attorney determined that the rezonings were legally adopted...."¹; however, no written report from the City Attorney's office was provided.

CPC specifically cited the following sections of the Land Development Code (LDC) and the Land Development Manual in questioning the application of these overlay zones.

- **§ 132.0103 - Official Zoning Maps**

Section 131.0103, which contains regulations regarding the Official Zoning Maps for base zones, applies to the overlay zones (emphasis added) in this article.

- **§ 131.0103 - Official Zoning Maps**

(a) Base zones are represented on the Official Zoning Maps to be prepared by the City. The Official Zoning Maps shall be identified as an exhibit (emphasis added) accompanying the ordinance that the City Council approves for any zoning or rezoning action.

- **Land Development Manual Volume I, Chapter 1, Section: Policy Approvals, page V-1, B. Rezonings**

Rezonings involve any proposed change to the base zone or overlay (emphasis added) zone of a property.

¹ Report No. P-033-320 for Planning Commission agenda of September 18, 2003.

- **§123.0103 Commencement of a Zoning or a Rezoning Action**

A proposed action to designate a zone on a property or change an existing zone may be commenced in the following manner:

- (a) By Resolution. The City Council or the Planning Commission may initiate a zoning or rezoning action by resolution; or
- (b) By Application. A property owner may commence a zoning or rezoning action by filing an application in accordance with Sections 112.0102 and 123.0104.

- **§123.0105 Decision Process for Zoning or Rezoning**

- (a) A decision on a proposed zoning or rezoning action shall be made in accordance with Process Five.
- (b) The City Council may approve a zoning or rezoning action whenever public necessity or convenience, the general welfare, or good zoning practice justifies this action.

- **§123.0108 Actions the City Council May Take on Zoning or Rezoning**

The City Council may take any of the following actions at the conclusion of a public hearing to consider a proposed zoning or rezoning application:

- (a) Adopt the proposed zoning or rezoning as recommended by the Planning Commission;
- (b) Reject the recommendation of the Planning Commission;
- (c) Modify the recommendation of the Planning Commission and adopt any other zone that has been identified for consideration in the public notice;
- (d) Adopt or reject the proposal or modify the proposal and adopt any other zone that has been identified for consideration in the public notice if the Planning Commission has not made a recommendation as described in Section 123.0107.

- **§112.0301 Types of Notice**

- (c) Notice of Public Hearing. A Notice of Public Hearing shall be provided before a decision is made on an application for a permit, map, or other matter acted upon in accordance with Process Three, Process Four, or Process Five, or on an appeal of a Process Two, Process Three, or Process Four decision.

- (1) Content. The Notice of Public Hearing shall include the following information:

- (A) The general subject of the public hearing including the type of *development permit* and the name of the proposed *development*.
 - (B) The location and size of the property that is the subject of the application.
 - (C) The community planning area in which the proposed *development* is located.
 - (D) A general description of the proposed *development*, including the square footage of proposed commercial or industrial uses and the proposed number of dwelling units.
 - (E) The name of the *applicant* and, with the consent of the *applicant*, the applicant's address and telephone number.
 - (F) The identity of the decision maker holding the public hearing.
 - (G) The date, time, and place of the public hearing.
 - (H) A brief description of the general procedures concerning the conduct of hearing and local actions and the procedure and requirements for filing an appeal. For Process Three or Process Four public hearings, the definition of an *interested person* for purposes of appeal.
 - (I) The name and telephone number of the City staff person to contact for additional information.
- (2) Distribution. Except as otherwise provided by the Municipal Code, the City Manager shall publish the Notice of Public Hearing in accordance with Section 112.0303, and shall mail the Notice of Public Hearing to the persons described in Section 112.0302(b), at least 10 *business days* before the date of the public hearing.

- **§112.0303 Published Notice**

When the Land Development Code requires a Notice of Public Hearing to be published, the City shall submit the Notice of Public hearing for publication in at least one newspaper of general daily circulation within the City. A published notice is effective on the date of publication.

- **§112.0305 Notice for Land Use Plans or Zoning Ordinances**

When a land use plan, a zoning ordinance, or a rezoning ordinance is to be considered at a public hearing, the City Manager shall submit a Notice of Public hearing for publication as set forth in Section 112.0303 to be published at least 10 business days before the date of the public hearing. This notice shall be provided in addition to the other notices required by this division.

- 1) Do the above citations accurately address the requirements for the application of overlay zones and in particular the TAOZ/RTPOZ?
- 2) Were these procedures followed in the most recent application of the TAOZ/RTPOZ in December 2000/January 2001?

- 3) If not, what was the basis for the determination “that the rezonings were legally adopted” as stated in the Report to the Planning Commission?

Please provide a written, legal opinion addressing these questions. Please limit the response to the designation of properties within an overlay zone; amendments to the Land Development Code to reflect the designations do not appear to be an issue. A response prior to this item being heard by the City Council would be appreciated. Thank you.

There are currently six overlay zones within District 6 (Mobilehome Park, Parking Impact Area, Residential Tandem, Transit Area, Clairemont Mesa Height Limit, and Community Plan Implementation). From an ethical as well as a legal standpoint, following proper procedure for applying overlay zones, particularly disclosure to our constituency, is extremely important to this office.

cc: Mayor and Councilmembers